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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

- - - - - X  
WALTER BUCKINGHAM, 13-CV-6264(W)  
Plaintiff  
vs.  
Rochester, New York  
LEWIS GENERAL TIRES, INC., May 31, 2016  
Defendant. 3:25 p.m.  
- - - - - X

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MARIAN W. PAYSON  
UNITED STATES MAGISTRATE JUDGE

WALTER BUCKINGHAM, PRO SE  
16 Elk Street  
Rochester, New York 14615

ROACH BROWN MCCARTHY & GRUBER, P.C.  
BY: MARK R. AFFRONTI, ESQ.  
1920 Liberty Building  
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Appearing on behalf of the Defendant

AUDIO RECORDER: Catherine A. Marr

TRANSCRIBER: Christi A. Macri, FAPR-CRR  
Kenneth B. Keating Federal Building  
100 State Street, Room 2120  
Rochester, New York 14614

(Proceedings recorded by electronic sound recording,  
transcript produced by computer).

P R O C E E D I N G S

\* \* \*

(WHEREUPON, the defendant is present).

**THE CLERK:** All rise.

**MAGISTRATE JUDGE PAYSON:** Please be seated.

**THE CLERK:** Walter Buckingham vs. Lewis General  
Tires Incorporated, 13-CV-6264(W).

**MAGISTRATE JUDGE PAYSON:** All right, good afternoon,  
Mr. Buckingham, Mr. Affronti. We've got a number of motions.

Mr. Buckingham has filed various motions which  
relate to his dissatisfaction with certain responses made by  
the defendant to discovery issues propounded -- discovery  
requests propounded by Mr. Buckingham.

I know, Mr. Affronti, that one of the issues that  
you raise was that there had not been a meet-and-confer. My  
thought was that you all are here to address discovery issues  
that are the subject of a motion to compel filed by the  
defendant. It makes sense to see whether we can move forward  
and resolve as many discovery issues as possible rather than  
have yet another date to come back in and go through oral  
argument.

I will say, Mr. Buckingham, that Mr. Affronti's  
objections are, you know, are appropriate in the sense that  
they do reflect the requirement by the rules that you're not  
allowed to file a motion on discovery unless you have made

1 efforts to try to resolve that dispute in the first instance  
2 with the opposing side, the party who is objecting to  
3 discovery.

4           So if there are discovery issues, what you need to  
5 do is in the first instance try to resolve them with the other  
6 side. If you cannot, then in your motion papers you have to  
7 say I have tried to resolve these issues, you know, I called  
8 Mr. Affronti on such and such a day, we had a two hour  
9 conversation, we could not resolve them, he told me that he  
10 was not going to change his position; or here are copies of  
11 letters that went back and forth that show that we can't  
12 resolve them.

13           But you have to put in an affidavit and the  
14 affidavit has to demonstrate the efforts that you went to to  
15 try to resolve the issues because lots of times there are  
16 discovery issues in which one party makes a discovery request  
17 and the other party then says -- and then they come to court  
18 and then the other party says, oh, that's what you were  
19 looking for? Well, I didn't understand that, you know, I'm  
20 happy to give you that, and the Court says, gee, we didn't  
21 really need to come to court for that.

22           So that's the -- that's the theory behind it. It  
23 seems to me, Mr. Affronti, that if you, you know, at this  
24 stage I think it's probably more -- more effort on your part  
25 if I say, okay, I'm now going to make you come back and go

1 through these requests one by one with Mr. Buckingham.

2           You know, I suspect that some of the issues that  
3 you had are issues that -- issues that we had which was not  
4 understanding entirely what Mr. Buckingham was looking for or  
5 how what he was looking for was relevant from Mr. Buckingham's  
6 perspective to the claims.

7           And so what I think I'd like to do is have  
8 Ms. Cornetta place on the record her understanding of whatever  
9 agreements were reached today.

10           Also place on the record those discovery requests  
11 as to which there is a dispute. My view is it's probably  
12 helpful if I go ahead and tell you, give you a ruling on those  
13 rather than tell you to go back and confer again and then  
14 you're not going to resolve them and then you're going to come  
15 back and we're going to have to go through this again.

16           So I understand that you did oppose it on that  
17 grounds and there is some question as to whether the conferral  
18 that the law requires has been done, at least to the extent  
19 that it need to be done.

20           And, Mr. Buckingham, if there are any other  
21 discovery disputes, I'm certainly going to look at the papers  
22 and make sure that I am satisfied that there's no question  
23 that you all have talked and tried to resolve it.

24           But hopefully we can move forward and there won't  
25 be anymore discovery disputes and this will end up being a

1 more efficient way to proceed.

2 Is that all right with you, Mr. Affronti?

3 **MR. AFFRONTI:** Yes, Your Honor.

4 **MAGISTRATE JUDGE PAYSON:** Okay. All right, so what  
5 I'm going to do now is ask Ms. Cornetta, who met with  
6 Mr. Buckingham and Mr. Affronti for I would say about an hour,  
7 a little more than an hour and went through Mr. Buckingham's  
8 discovery disputes, leaving for me the ones that were raised  
9 by defendant's papers and I'll address those in a minute.

10 But let's have Ms. Cornetta place on the record her  
11 understanding of where things were left with Mr. Buckingham's  
12 request; where there is the necessity for a ruling from the  
13 Court, I'll give you that ruling, okay?

14 Okay, go ahead.

15 **MS. CORNETTA:** So first we discussed which discovery  
16 demands Mr. Buckingham was interested in discussing and had,  
17 you know, were the subject of his motion to compel.

18 Mr. Buckingham indicated that he was seeking  
19 further responses to his interrogatories. The interrogatories  
20 and the defendant's responses can be found at docket 58 and  
21 docket 62.

22 We went through each of the interrogatories,  
23 starting with Interrogatory No. 1, which reads please provide  
24 copies of all documents which include the names of dates of  
25 all persons that were hired in the Retail Department and

1 Commercial Department regardless if their job employment  
2 didn't work out for them, or they quit, from 2012 to present.

3 We discussed this interrogatory and Mr. Affronti  
4 represented that he had spoken with his client and that there  
5 were no persons hired in either the Retail or  
6 Commercial Department from 2012 through the date of his  
7 interrogatory response.

8 And so based on that he had no responsive  
9 information.

10 **MAGISTRATE JUDGE PAYSON:** Okay. And Ms. Cornetta's  
11 understanding is correct?

12 **MR. AFFRONTI:** That's correct, Your Honor.

13 **MAGISTRATE JUDGE PAYSON:** Okay, motion to compel any  
14 further response with respect to Interrogatory No. 1 is  
15 denied.

16 **MS. CORNETTA:** Okay. With respect to  
17 Interrogatory No. 2, the request reads please provide copies  
18 of all documents which include employment advertisements for  
19 open positions in the Retail Department and  
20 Commercial Department through ads, internet, Craigslist, Penny  
21 Saver, e-mails, employees, managers, supervisors and owners.

22 With respect to this interrogatory, Mr. Affronti,  
23 and, in fact, in the interrogatory response there was one ad  
24 that was identified that was placed on Craigslist.

25 **MAGISTRATE JUDGE PAYSON:** Mm-hmm.

1                   **MS. CORNETTA:** Mr. Affronti represented that he  
2 spoke with his client and that his client conducted a search  
3 for any versions of that advertisement. His client indicated  
4 to him that they had no versions of the advertisement in their  
5 possession.

6                   And that they also conducted a search for any other  
7 advertisements that would be responsive to the interrogatory  
8 and that his client had indicated to him that there were no  
9 additional responsive ads.

10                  **MAGISTRATE JUDGE PAYSON:** Okay. And that's a  
11 correct understanding, Mr. Affronti?

12                  **MR. AFFRONTI:** That is correct, Your Honor.

13                  **MAGISTRATE JUDGE PAYSON:** Okay, motion to deny --  
14 excuse me, the motion to compel any further response to  
15 Interrogatory No. 2 is denied.

16                  Before we continue, Mr. Buckingham, are you looking  
17 for paper and a pen to make notes?

18                  **MR. BUCKINGHAM:** No. What I want to say is, Your  
19 Honor, when they say they have ads in the paper, they placed  
20 the ad for a position of a mechanic, which was around the same  
21 time I retrieved the ad, which was looking for a tire  
22 technician.

23                  **MAGISTRATE JUDGE PAYSON:** Well, my understanding is  
24 Mr. Affronti said his client looked to see whether they had  
25 copies of any such advertisements in their records, and at the

1 time the interrogatories were served the answer was no, right?  
2 That was being requested there?

3 **MS. CORNETTA:** Yeah, there were two -- two  
4 departments, Retail Department and Commercial Department,  
5 advertisements for open positions and Mr. Affronti had  
6 represented that his client identified one, but that they no  
7 longer had possession of it.

8 **MAGISTRATE JUDGE PAYSON:** Right.

9 **MS. CORNETTA:** And that they looked for any other  
10 advertisements that would be responsive and that they  
11 indicated they don't have possession of any. That was what he  
12 had represented to me.

13 **MAGISTRATE JUDGE PAYSON:** Okay. And what I don't  
14 want to do is sort of reargue all these. I'm going to have  
15 Ms. Cornetta place on the record what was said, I'm going to  
16 make rulings on them and then we're going to move on to the  
17 next motions.

18 I thought you were looking for something to make --

19 **MR. BUCKINGHAM:** No, I want to know if I can use  
20 that ad that I retrieved versus the ad that they said they  
21 didn't have any ads for tire technician that they couldn't  
22 retrieve.

23 **MAGISTRATE JUDGE PAYSON:** I can't advise you with  
24 respect to whether something is going to be admitted as  
25 evidence at a trial or on a motion. I just can't give you



1 that advice. It has to meet certain evidentiary requirements.

2 But that's something that, you know, you're free to  
3 attempt to do. I can't tell you -- you're not precluded from  
4 trying to do that, but I can't tell you whether the District  
5 Court is going to allow that in.

6 **MR. BUCKINGHAM:** So is you saying they not gonna be  
7 forced to turn over --

8 **MAGISTRATE JUDGE PAYSON:** I'm saying they  
9 represented they have no responsive documents, so I am taking  
10 that representation and I'm denying the motion, okay?

11 Go ahead.

12 **MS. CORNETTA:** Interrogatory No. 3 reads please  
13 provide copies of all documents which include written  
14 agreements, meeting plans, telephone conversations, e-mails,  
15 names, persons, specific involvement, times and dates on Lewis  
16 General Tires Incorporated, treasurer controller Manny  
17 D'Ambrosio, orders for unjust termination of I, Walter  
18 Buckingham.

19 We discussed this interrogatory and the defendant's  
20 objection that they -- they thought the interrogatory was  
21 unclear. Mr. Buckingham had indicated that what he was  
22 searching for with respect to this interrogatory was written  
23 agreements concerning his employment with Lewis General Tires  
24 .

25 And in specifics he had identified a document

1 regarding his return to work on Mondays through Fridays  
2 beginning on June 2nd.

3 And Mr. Affronti represented that he would go back  
4 to his client. He thinks that he knows what document  
5 Mr. Buckingham is talking about. He thinks it was provided  
6 already in initial disclosures, but that he would go back and  
7 look for that document and if it wasn't produced, he would  
8 produce it.

9 **MAGISTRATE JUDGE PAYSON:** Okay. Mr. Affronti, just  
10 so that we can make sure we don't lose track of things here,  
11 it's the 31st. Can I ask you that that search, and assuming  
12 you find that document, that the document be produced by no  
13 later than 30 days from today, which would be June 30th?

14 **MR. AFFRONTI:** Oh, absolutely, Your Honor.

15 **MAGISTRATE JUDGE PAYSON:** And it may well be you  
16 have that in hand and can produce it to Mr. Buckingham much  
17 sooner than that, but in no event later than June 30th.

18 So, Mr. Buckingham, with respect to  
19 Interrogatory No. 3, Mr. Affronti has indicated that he's  
20 going to go and look for that agreement and get that to you by  
21 no later than June 30th, okay?

22 **MR. BUCKINGHAM:** Okay.

23 **MAGISTRATE JUDGE PAYSON:** All right.

24 **MS. CORNETTA:** Interrogatory No. 4 reads please  
25 identify the names, actual street address and telephone

1 numbers of all persons, companies, affiliations and parties  
2 who have given conversations, written and recorded statements,  
3 also e-mails to Lewis General Tires, Inc. and their attorneys  
4 concerning the subject matter of the lawsuit.

5 We discussed this interrogatory, again the  
6 defendants had objected on the grounds that the interrogatory  
7 was unclear. They also objected to the extent the  
8 interrogatory sought any attorney-client or work product  
9 privileged materials.

10 Mr. Buckingham had indicated that what he was  
11 seeking in response to this interrogatory was the identity of  
12 the individual who told an individual named Manny to terminate  
13 him.

14 Mr. Affronti represented that he would go back to  
15 his client and attempt to identify any individual that had  
16 instructed Manny to terminate Mr. Buckingham to the extent  
17 they can identify an individual and such an individual exists.

18 **MAGISTRATE JUDGE PAYSON:** Okay.

19 **MS. CORNETTA:** He also maintained his objection to  
20 producing any kind of information that Mr. Buckingham  
21 identified he was seeking any identities of anybody that met  
22 with Mr. Affronti, and Mr. Affronti objects on the grounds of  
23 attorney-client privilege and work product.

24 **MAGISTRATE JUDGE PAYSON:** Mm-hmm.

25 **MS. CORNETTA:** And that issue would need a ruling

1 from the Court.

2 **MAGISTRATE JUDGE PAYSON:** Okay. Mr. Buckingham, you  
3 want to know -- you think somebody told Manny to fire you?

4 **MR. BUCKINGHAM:** In our conversation, I turned over  
5 written transcript of everything that was said between me and  
6 Manny.

7 **MAGISTRATE JUDGE PAYSON:** Mm-hmm.

8 **MR. BUCKINGHAM:** He made it clear I was terminated.

9 **MAGISTRATE JUDGE PAYSON:** And there's something in  
10 that transcript that makes you think that --

11 **MR. BUCKINGHAM:** -- because I was saying to him --

12 **MAGISTRATE JUDGE PAYSON:** -- let's not talk over  
13 each other because somebody may have to prepare a transcript  
14 of this.

15 **MR. BUCKINGHAM:** I'm sorry.

16 **MAGISTRATE JUDGE PAYSON:** You think that that  
17 transcript shows that someone told Manny to fire you; is that  
18 right?

19 **MR. BUCKINGHAM:** Correct.

20 **MAGISTRATE JUDGE PAYSON:** And you want to know who  
21 that person is or persons? It's one person is your  
22 understanding?

23 **MR. BUCKINGHAM:** Yes.

24 **MAGISTRATE JUDGE PAYSON:** Okay. I am going to  
25 direct Mr. Affronti to identify in response to -- that's

1 Interrogatory 4, right?

2 **MS. CORNETTA:** No. 4.

3 **MAGISTRATE JUDGE PAYSON:** -- in response to  
4 Interrogatory 4 any persons who directed --

5 **MS. CORNETTA:** That Manny D'Ambrosio.

6 **MR. BUCKINGHAM:** Yes, because there's a contract  
7 that was signed by the owner and Manny --

8 **MAGISTRATE JUDGE PAYSON:** Okay. All right. Any  
9 person who directed -- and just so nobody at the client draws  
10 lines that end up being, I think, too close to the edge, I'm  
11 going to say who directed or suggested that Manny D'Ambrosio  
12 terminate Mr. Buckingham.

13 So I am going to direct that Mr. Affronti answer  
14 the interrogatory to the extent that it seeks that  
15 information, and that that response be provided to  
16 Mr. Buckingham by no later than June 30th.

17 With respect to Mr. Buckingham's request that the  
18 defendant identify those individuals who spoke to Mr. Affronti  
19 concerning Mr. Buckingham's termination or the subject matter  
20 of this litigation, I am going to deny that request on the  
21 grounds of privilege.

22 **MS. CORNETTA:** Interrogatory No. 5 reads please  
23 identify the total number of blacks who applied for jobs with  
24 Lewis General Tires Inc. and how many of them were actually  
25 awarded employment from 2012 to present .

1           We discussed this interrogatory. Mr. Affronti  
2 represented that his client, Lewis General Tires, does not  
3 keep records of the race or national origin of its employees  
4 and that its application has no place on the application to  
5 indicate or self-identify an applicant's race or national  
6 origin and, therefore, that his client was unable to provide  
7 any information in response to this interrogatory.

8           **MAGISTRATE JUDGE PAYSON:** Okay. That doesn't  
9 surprise me that the application doesn't have a space to  
10 identify race. People sometimes assume that race is obvious  
11 and sometimes those assumptions are not correct.

12           Mr. Buckingham's lawsuit certainly raises  
13 allegations of race discrimination. Mr. Buckingham was an  
14 employee, he was hired --

15           **MR. BUCKINGHAM:** Yes.

16           **MAGISTRATE JUDGE PAYSON:** -- by Lewis General Tires.  
17 This is not a failure to hire case.

18           But having said that, and this observation  
19 permeates a couple of the other requests, what I want to make  
20 sure is that as a matter of fairness, I understand  
21 Mr. Buckingham said in the conference that he believes he was  
22 the only African-American employee at Lewis General Tires  
23 during the entire period of your employment or in your  
24 department or what?

25           **MR. BUCKINGHAM:** During the time period of my

1 employment, but that's not the only thing. It's what I heard  
2 when I was in the restroom stall.

3 **MAGISTRATE JUDGE PAYSON:** Let me focus on the first  
4 part. Your belief is that you were the only African-American  
5 employee at Lewis General Tires during the period of your  
6 employment?

7 **MR. BUCKINGHAM:** Yes, I was.

8 **MAGISTRATE JUDGE PAYSON:** Okay. And what it seems  
9 fair to me is that if the defendant is saying we don't keep a  
10 record of anybody's race or national origin, we can't go to a  
11 file and say there were four African-American employees, that  
12 you are not going to come in at trial or on summary judgment  
13 motion with an affidavit of somebody who says oh, in fact,  
14 there were three African-American employees who worked in this  
15 department or that department and here they are.

16 So I think, Mr. Buckingham, if your position on a  
17 summary judgment motion and at a trial is going to be we can't  
18 tell you whether there were other African-American employees  
19 at Lewis General Tires, Mr. Buckingham says there weren't,  
20 we're not in a position to say he's right or not right, then,  
21 you know, I think the question of who -- who applied is --  
22 your position is fine with respect to that particular request.

23 But I don't think it would be fair if you were to  
24 then bring some witness forward who says, okay, there's  
25 nothing on the application, but you know what? I interviewed

1 four black people. You can't -- you can't have it both ways.

2 So I just want to make sure that in answering that  
3 way, you are sure that your client is not going to come in and  
4 make any representations about, you know, other  
5 African-American employees besides Mr. Buckingham at Lewis  
6 General Tires during the period of Mr. Buckingham's  
7 employment.

8 **MR. AFFRONTI:** No, I understand Your Honor's  
9 concern. I guess I think it's a similar analysis however  
10 to -- I mean, we're taking the race issue because that seems  
11 to be central to this particular lawsuit, but I think to the  
12 extent that this type of issue arises in other cases, I mean,  
13 I assume that as a defendant we're typically restricted from  
14 bringing in different evidence that was failed to be turned  
15 over, whether it's a document request or interrogatory in any  
16 type of case.

17 So to the extent that we would spring a surprise at  
18 the time of trial, whether it has to do with race or whether  
19 it has to do with something else, I think the Court would be  
20 in a position to make that ruling anyhow.

21 Based upon our response, my client has informed me  
22 that they have no way of keeping records. They don't keep  
23 records of this type of stuff.

24 Do I anticipate that being the case that someone's  
25 going to come in and say, well, you shouldn't find for the



1 plaintiff, Your Honor, because I interviewed X-number of  
2 minority candidates? I've never had that conversation with  
3 them and I don't anticipate that being part of our case.

4 But I can understand the concern the Court has.

5 **MAGISTRATE JUDGE PAYSON:** Well, I'm not the district  
6 judge, but I would be inclined not to allow you to do that. I  
7 mean, this is different than -- it seems to me this is  
8 different than finding out evidence that surprises you.

9 This is a question of, you know, doing the  
10 diligence that you need to do to respond to requests.

11 Now, you know, it could be that Mr. Buckingham's  
12 supervisor, you know, when you talk to Mr. Buckingham's  
13 supervisor about race issues in the department where  
14 Mr. Buckingham worked would say to you, I know I worked with  
15 three other African-American men. So maybe these individuals  
16 didn't self-identify and they're not in the personnel record,  
17 but boy, you know, you put Mr. Buckingham's supervisor on the  
18 stand, he's going to identify Mr. Buckingham was not the only  
19 black man in the department, there were three other people.

20 And Mr. Buckingham should not be in a position to  
21 learn that for the first time at trial. I mean, that's a  
22 pretty fundamental element of his case, as I understand it, is  
23 that he understands he was the only black person who worked at  
24 Lewis General Tires, and that he was terminated -- he  
25 contends -- on account of his race.

1           So he is -- would generally be entitled to  
2 comparative information and he's entitled to know whether the  
3 defendant is going to come in with some evidence, whether it's  
4 in the personnel files or through witness testimony, that I  
5 think he's entitled to know.

6           He can write in the interrogatory how many black  
7 people worked at Lewis General Tires, and you do have an  
8 obligation to exercise due diligence in answering that, and I  
9 think that obligation would extend beyond just looking at the  
10 personnel files. You would have to say, okay, you know, talk  
11 to people who know the answer to that.

12           If you think you need more time to answer that  
13 interrogatory because you weren't prepared to go through  
14 necessarily all of these, that's fine, I'll give you more time  
15 to do that. I don't want to put you unfairly on the spot.

16           But I think Mr. Buckingham is entitled to know  
17 that -- the answer to that question.

18           **MR. AFFRONTI:** Yeah, I would -- Your Honor, if we  
19 could have a 30 day kind of timeline for the other issues that  
20 we've addressed earlier today, if you'd like me to rephrase  
21 that inquiry with the client to be able to find out if they  
22 are able to -- I guess I'm trying to choose my words carefully  
23 here -- I hesitate to ask them to try to get current employees  
24 or even past employees to self-identify as a certain race. I  
25 don't think that would be appropriate.

1                   **MAGISTRATE JUDGE PAYSON:** No, I'm not asking that.

2                   **MR. AFFRONTI:** But asking them off the top of their  
3 head if they know how many black individuals were working  
4 there at the time that Mr. Buckingham was working there --

5                   **MAGISTRATE JUDGE PAYSON:** How big was Lewis General  
6 Tires?

7                   **MR. BUCKINGHAM:** They hired -- they can't keep a  
8 tire tech there. They come and go every year.

9                   **MAGISTRATE JUDGE PAYSON:** Okay. And on any given  
10 day how many people were --

11                   **MR. BUCKINGHAM:** Okay, yeah, three guys on the road,  
12 they claim there was only one service guy, we had three guys  
13 on the road -- no, four, four on the road, and we had three  
14 guys in the shop because commercial is like -- 80% of the  
15 company business is commercial.

16                   **MAGISTRATE JUDGE PAYSON:** So we're talking about  
17 total employees --

18                   **MR. BUCKINGHAM:** So we had -- we had --

19                   **MAGISTRATE JUDGE PAYSON:** 50? 10? 100.

20                   **MR. AFFRONTI:** Without exact numbers, Your Honor, I  
21 think we're talking in the range of 40 to 50.

22                   **MAGISTRATE JUDGE PAYSON:** 40 to 50 people, okay.  
23 What I'm going to do is consistent with the guidance that I  
24 have just offered, I am going to direct Mr. Affronti to  
25 supplement his response to that interrogatory to address the

1 concerns that I've just raised.

2 And you can look at it, Mr. Buckingham. If you  
3 think there's something more that's required, call  
4 Mr. Affronti or send him a letter, something, have a  
5 conversation. And then if you can't work it out, you can come  
6 back to me.

7 **MR. BUCKINGHAM:** Okay, can I say one thing? I just  
8 been protecting myself ever since this trial been going on.  
9 This guy won't talk to me. We had to go through a mediator.  
10 I had to file with the Court in order to have a mediator.

11 **MAGISTRATE JUDGE PAYSON:** I just indicated what the  
12 obligations are. If you come back to me and say, you know,  
13 here are the letters that I sent, here are copies of the  
14 letters that I sent to Mr. Affronti and I got no response  
15 or --

16 **MR. BUCKINGHAM:** Okay.

17 **MAGISTRATE JUDGE PAYSON:** -- I called him and he  
18 never called me back, that's fine. You've tried to confer  
19 under those circumstances.

20 **MR. BUCKINGHAM:** Fine.

21 **MAGISTRATE JUDGE PAYSON:** Okay? So what I'm saying  
22 is, you know, my view is when Mr. Affronti says there hasn't  
23 been the effort to confer, he can't make that argument if he's  
24 unwilling to confer with you.

25 So I expect he will confer with you and I expect

1 that you will make efforts to confer with him, but all that  
2 the law requires is that you make reasonable efforts to confer  
3 with him. If he won't talk to you, then I'll hear your  
4 motion. If he will talk to you and you don't try to talk to  
5 him, I'm not going to hear your motion, okay?

6 **MR. BUCKINGHAM:** All right. That way I have some --  
7 (inaudible).

8 **MAGISTRATE JUDGE PAYSON:** Do it by letter, then you  
9 have a copy of it, okay?

10 **MR. BUCKINGHAM:** All right.

11 **MAGISTRATE JUDGE PAYSON:** Okay.

12 **MS. CORNETTA:** Okay, No. 6, the --

13 **MAGISTRATE JUDGE PAYSON:** Was that 5 or 6?

14 **MS. CORNETTA:** That was 5. No. 6, please provide  
15 copies of all documents, statements, memos, orders that were  
16 given out to employees by Lewis General Tires Inc. managers,  
17 supervisors and owners including Richard Lewis, Craig Lewis  
18 owners, pertaining to this lawsuit to avoid this action being  
19 taken against them in this lawsuit.

20 We discussed this interrogatory. Defendants had  
21 objected on the grounds that they couldn't understand the  
22 interrogatory. They did indicate that they had --  
23 Mr. Affronti represented that he had looked or asked his  
24 client to look for any statements or memos that were issued to  
25 all employees after Mr. Buckingham was terminated regarding

1 his termination, and that there were no responsive documents.

2 Mr. Buckingham indicated that he was also looking  
3 for any documents that were provided to the investigator at  
4 the Division of Human Rights in connection with his claim --

5 **MAGISTRATE JUDGE PAYSON:** Mm-hmm.

6 **MS. CORNETTA:** -- in front of the division. And  
7 Mr. Affronti represented that any information that was  
8 provided to the Division of Human Rights was also provided to  
9 Mr. Buckingham at that time so he should already have that  
10 information.

11 And they had no other responsive information to  
12 this interrogatory.

13 **MAGISTRATE JUDGE PAYSON:** Okay, Mr. Affronti, no  
14 further responsive information?

15 **MR. AFFRONTI:** No, Your Honor, that's it.

16 **MAGISTRATE JUDGE PAYSON:** Okay. You have talked  
17 with your client and ensured that your client has done a  
18 search for memoranda or notes that reflect the decision to  
19 terminate Mr. Buckingham, any meetings in which Mr. Buckingham  
20 was terminated, any consideration given after the termination  
21 about that decision?

22 I mean, you've looked for that? Because those  
23 kinds of records would obviously be central to this case, and  
24 I gather from what you said that that is what you have looked  
25 for and I presume you've turned over any such records?

1           **MR. AFFRONTI:** Yes, Your Honor. We -- my client and  
2 I went through each one of these, both over the phone and then  
3 when I went out to their shop and personally went through  
4 everything to find out -- the way I read this was, hey, have  
5 you guys handed anything out to your employees --

6           **MAGISTRATE JUDGE PAYSON:** Yeah.

7           **MR. AFFRONTI:** -- regarding Walter Buckingham --

8           **MAGISTRATE JUDGE PAYSON:** Right.

9           **MR. AFFRONTI:** -- and they said no, we don't -- we  
10 don't write memos, any of the rest of that stuff.

11           In seeking clarification prior to our appearance on  
12 the record here today, I understand that he was looking for  
13 documents that may be contained in his employee file which  
14 would have been disclosed as part of the presentation to the  
15 New York State Division of Human Rights.

16           **MAGISTRATE JUDGE PAYSON:** Okay. Does -- is there a  
17 personnel file for Mr. Buckingham? I mean, a physical  
18 personnel file?

19           **MR. AFFRONTI:** Correct, yes.

20           **MAGISTRATE JUDGE PAYSON:** Okay. Has that been  
21 produced to Mr. Buckingham?

22           **MR. AFFRONTI:** As we've discussed, I believe that  
23 was turned over as part of the Rule 26, but it certainly was  
24 disclosed to him in the administrative phases of this part.

25           **MAGISTRATE JUDGE PAYSON:** Okay. I understand --

1 Mr. Buckingham, do you have that personnel file?

2 **MR. BUCKINGHAM:** Excuse me?

3 **MAGISTRATE JUDGE PAYSON:** Do you have your personnel  
4 file?

5 **MR. BUCKINGHAM:** Yeah, a copy of my license, yeah, I  
6 have that.

7 **MAGISTRATE JUDGE PAYSON:** Well, whatever is in your  
8 personnel file, I assume that there are records in there about  
9 when you were hired, what you were going to get paid, probably  
10 health information or people to contact in the event of an  
11 emergency, probably records in there about your termination.

12 Do you have those personnel records?

13 **MR. BUCKINGHAM:** Not in the same file of my  
14 termination.

15 **MAGISTRATE JUDGE PAYSON:** Mr. Affronti, I understand  
16 that this is -- let me finish -- that this is a burden that  
17 you say your client has already born to provide those records  
18 to Mr. Buckingham.

19 I am asking you if you would please make another  
20 copy of the personnel file and provide that to Mr. Buckingham  
21 by no later than June 30th.

22 **MR. AFFRONTI:** Yes, Your Honor.

23 **MAGISTRATE JUDGE PAYSON:** Okay. Mr. Affronti has  
24 represented that there were no memos or documents or  
25 correspondence that was issued by Lewis General Tires to any



1 of its employees about Mr. Buckingham and about  
2 Mr. Buckingham's termination.

3 **MR. BUCKINGHAM:** I have memos here and it's about  
4 Mr. Buckingham. It's about me. And it's got a signature on  
5 there, I have two memos here.

6 **MAGISTRATE JUDGE PAYSON:** Does that memo show it was  
7 distributed to employees?

8 **MR. BUCKINGHAM:** Distribute to someone in the  
9 defense for the company against me. One -- one is stating  
10 something that I said and to a supervisor, which I have a  
11 contract saying I wasn't even at work on that day.

12 **MAGISTRATE JUDGE PAYSON:** Okay. Well, I -- the  
13 requests themselves are, unfortunately, not the clearest  
14 requests. I'm doing the best I can to assure that  
15 Mr. Affronti has provided what I think are the documents that  
16 typically are provided in an employment discrimination case,  
17 which would be personnel files, documents related to the  
18 discipline that is at issue, as well as treatment of anybody  
19 who is a comparatively situated employee.

20 To the extent that there are memos there that  
21 reference you, you have those memos.

22 **MR. BUCKINGHAM:** Yes.

23 **MAGISTRATE JUDGE PAYSON:** To the extent this  
24 particular interrogatory is asking is there some kind of memo  
25 that was distributed to a group of people about your

1 termination, Mr. Affronti has said he's checked with the  
2 client and the client has represented nobody wrote something  
3 up and distributed it to people and say here's what happened  
4 to Walter Buckingham.

5           You may have a memo that somebody prepared to say  
6 here are the circumstances of -- I don't know what the memo  
7 says, but gave it to someone else, but that's not a sort of  
8 widely disseminated memorandum that I understood from that  
9 request you were asking for.

10           I'm satisfied with the response. I'm not going to  
11 compel any further response to Interrogatory No. 6.

12           Go ahead.

13           **MS. CORNETTA:** Okay, Interrogatory No. 7 and 8 raise  
14 the same issue for the Court, so I thought I would just read  
15 both of those.

16           **MAGISTRATE JUDGE PAYSON:** Yes.

17           **MS. CORNETTA:** No. 7 reads please provide copies of  
18 all documents, statements, memos, orders, conference calls,  
19 e-mails and suggestions that were given by Mark R. Affronti,  
20 Roach, Brown, McCarthy and Gruber, PC to Lewis General Tires  
21 Inc. managers, supervisors and all owners Richard Lewis, Craig  
22 Lewis owners, including all employees pertaining to this  
23 lawsuit.

24           **MAGISTRATE JUDGE PAYSON:** And that's governed by  
25 attorney-client privilege and is protected by attorney-client

1 privilege. So I'm not going to require any response to that  
2 interrogatory.

3 Go ahead.

4 **MS. CORNETTA:** And No. 8 reads please provide copies  
5 of all documents, statements, memos, conversations, conference  
6 calls, appointments, orders, schedules and names of Lewis  
7 General Tires Inc. previous and present employees that met or  
8 was advised to meet with attorney Mark R. Affronti, Roach,  
9 Brown, McCarthy, Gruber PC at 1920 Liberty Building, 424 Main  
10 Street, Buffalo, New York and Rochester, New York location  
11 discussing this lawsuit.

12 **MAGISTRATE JUDGE PAYSON:** Okay, and I'm not going to  
13 require Mr. Affronti to turn over the names of everybody that  
14 he's talked to about the litigation. That's something that  
15 would be protected by work product protection, as well as  
16 potentially by the attorney-client privilege and I'm not going  
17 to require any further response.

18 **MS. CORNETTA:** Okay. No. 9 and 11 also raise the  
19 same issue -- I'm sorry, not the same issue, but they raise  
20 similar issues so I'll read them together.

21 No. 9 reads please provide the company name of your  
22 insurance, copies of your insurance that covers injuries,  
23 death , fires in the workplace, accidents from unlicensed  
24 drivers and DWI drivers performing road service for your  
25 company.

1           And No. 11 reads please provide the name, copies of  
2 your insurance that covers all fines, environmental, state,  
3 federal, penalty charges, waste, Government, tax fines and  
4 lawsuits for your company.

5           In response to this -- these two interrogatories,  
6 the defendants have objected to providing any insurance  
7 information on the grounds that it's not relevant, although in  
8 response to Interrogatory No. 10 they did indicate the name of  
9 the insurance company that supplied coverage for this lawsuit.

10           **MAGISTRATE JUDGE PAYSON:** You said 9 and 11?

11           **MS. CORNETTA:** Right, I'm sorry. No.'s 9 and 11  
12 they've objected to providing any information.

13           **MAGISTRATE JUDGE PAYSON:** And 10 they gave --

14           **MS. CORNETTA:** I'm noting in No. 10 they did provide  
15 the insurance company that would provide coverage for this  
16 litigation.

17           **MAGISTRATE JUDGE PAYSON:** Okay. Mr. Buckingham,  
18 what is the relevance of names of insurance companies?

19           **MR. BUCKINGHAM:** Because it's a discrimination case  
20 with damages.

21           **MAGISTRATE JUDGE PAYSON:** Okay, and you've gotten  
22 the name of the insurance company who would be covering any  
23 claims, any of your claims in this case.

24           So what is the relevance of any other insurance  
25 companies?

1                   **MR. BUCKINGHAM:** I didn't know if that information  
2 was still accurate because it's been like three years.

3                   **MAGISTRATE JUDGE PAYSON:** All right. Well,  
4 Mr. Affronti, you still dealing with the same insurance  
5 company?

6                   **MR. AFFRONTI:** It's the same people who hired me,  
7 Judge, yes.

8                   **MAGISTRATE JUDGE PAYSON:** So same insurance company.  
9 I'm going to deny any further response to No.'s 9 and 11.

10                  **MS. CORNETTA:** And that was all of the --

11                  **MAGISTRATE JUDGE PAYSON:** Okay.

12                  **MS. CORNETTA:** -- discovery disputes.

13                  **MAGISTRATE JUDGE PAYSON:** Okay. Can I have the  
14 papers with respect to Mr. Affronti's motion here? Thank you.

15                  So, Mr. Affronti, you have filed a motion to compel  
16 Mr. Buckingham to provide further responses to various  
17 interrogatories, document requests.

18                  So we'll go through those, okay?

19                  **MR. AFFRONTI:** Yes.

20                  **MAGISTRATE JUDGE PAYSON:** Anything -- I don't need  
21 you to argue them.

22                  **MR. AFFRONTI:** No, no. I just want -- Your Honor,  
23 the original request was for dismissal of the action for the  
24 fact that this is the third time we're now before Your Honor  
25 for information.

1                   **MAGISTRATE JUDGE PAYSON:** Okay, I don't intend to  
2 recommend to the district judge that Mr. Buckingham's action  
3 be dismissed. I wouldn't have put you through the exercise of  
4 responding to Mr. Buckingham's discovery if I intended to do  
5 that.

6                   But I do want to go through the particular  
7 interrogatories and try to get at whether there is some  
8 further response that Mr. Buckingham needs to make.

9                   Okay, Interrogatory No. 2 asks Mr. Buckingham to  
10 identify the manner and respect in which he claims the  
11 defendant discriminated against him. That's Interrogatory No.  
12 2.

13                  Interrogatory No. 1 had asked for particular dates  
14 and to provide more information -- I'm just looking, let's  
15 see, document 23 -- all right, Christin, where is 23 I was  
16 looking at this morning?

17                  So No. 1 had asked Mr. Buckingham to describe  
18 incidents on March 31, 2012; April 13th, 2012; May 16th, 2012;  
19 May 18th, 2012; and then (e) any other date.

20                  And I've looked at Mr. Buckingham's response. He's  
21 provided quite a bit of information with respect to the dates  
22 that have been identified in Interrogatory 1 and his  
23 interrogatory responses make clear that his answer that he is  
24 providing is an answer to Interrogatory 1 and 2. So the  
25 answer should be read as a response to Interrogatory 2 as well

1 as 1.

2 So the question to Mr. Buckingham is are there any  
3 other incidents of discrimination that you were subject to  
4 other than the particular dates that you have identified in  
5 your interrogatory response?

6 **MR. BUCKINGHAM:** Yeah, on the 29th when I was in the  
7 restroom stall I overheard two white males saying we don't  
8 need no blacks working for our company.

9 Then after that --

10 **MAGISTRATE JUDGE PAYSON:** And you didn't put that in  
11 your interrogatory response to 1 and 2?

12 **MR. BUCKINGHAM:** No.

13 **MAGISTRATE JUDGE PAYSON:** Okay. If there is  
14 anything that you would seek to offer evidence on at trial or  
15 in a summary judgment motion beyond the four dates that you  
16 identified in Interrogatory 1, Interrogatory 2 is asking you  
17 to identify any other acts of discrimination in your  
18 employment.

19 And if you don't do that, then at trial you risk  
20 when you seek to offer that evidence, that the judge will say  
21 you didn't identify it in response to your interrogatory, you  
22 can't offer that evidence, okay?

23 I know I have seen elsewhere references to -- to an  
24 incident in the restroom. I know I've seen that, but you have  
25 to put that in your response; and any other acts of

1 discrimination that you would seek to be offering evidence on.

2 **MR. BUCKINGHAM:** Okay, what about the contract? I  
3 had presented the contract that was signed by Richard Lewis --

4 **MAGISTRATE JUDGE PAYSON:** I can't -- if there's  
5 something that -- an event or an incident in your employment  
6 in which -- and you are -- you are alleging that you were  
7 discriminated against on the basis of your race in that  
8 incident or that event then you have to identify, summarize  
9 that in response to Interrogatory 2, okay?

10 So if you think there is something about that  
11 contract in which you were treated in a manner that was  
12 discriminatory against you on the basis of your race, you have  
13 to describe that.

14 **MR. BUCKINGHAM:** The contract states that I am  
15 returning to work, I am to work, but they fired me before that  
16 contract even (inaudible).

17 **MAGISTRATE JUDGE PAYSON:** So if your contention is  
18 that that is evidence of their discrimination, then you need  
19 to say that.

20 **MR. BUCKINGHAM:** Right.

21 **MAGISTRATE JUDGE PAYSON:** Okay?

22 **MR. BUCKINGHAM:** What form is that?

23 **MAGISTRATE JUDGE PAYSON:** What?

24 **MR. BUCKINGHAM:** On what form is that? Because I've  
25 been submitting all this stuff so I'm submitting all this



1 evidence and -- but it's not being counted. I don't know  
2 what's going on.

3 **MAGISTRATE JUDGE PAYSON:** Well, it is being -- it is  
4 being counted. And, let's see, No. 23, where is the answers?  
5 The answers are in which number?

6 **MS. CORNETTA:** 49.

7 **MAGISTRATE JUDGE PAYSON:** 49, okay. So here's your  
8 answers, Mr. Buckingham, look up here, No. 49, you have  
9 interrogatories No.'s 1 and 2 and then you answer them here,  
10 okay?

11 And you don't say anything in these three pages  
12 responding to interrogatories 1 and 2 as far as I can tell  
13 about anything in the bathroom or about that back to work  
14 agreement.

15 So if you're saying that there are incidents other  
16 than these that you have described in the first three pages of  
17 document 49, which are your responses --

18 **MR. BUCKINGHAM:** Document 49.

19 **MAGISTRATE JUDGE PAYSON:** -- okay? You need to send  
20 Mr. Affronti and file with the Court a document by no later  
21 than June 30th that says supplemental response to  
22 interrogatories 1 and 2 and you need to identify any acts or  
23 events, identify the manner and respect in which it is claimed  
24 the defendant discriminated against you concerning your  
25 employment and 1 asks for any other dates.

1                   So if there are particular instances or incidences  
2 or events besides those that you've already written about in  
3 document 49 in which you think the defendant discriminated  
4 against you because of your race, you need to describe those,  
5 okay?

6                   So just send a copy to Mr. Affronti, file with the  
7 Court a document, supplemental response to interrogatories 1  
8 and 2, in addition to what I have already described in  
9 interrogatories 1 and 2 and then list anything, summarize  
10 anything else, okay?

11                   **MR. BUCKINGHAM:** That's docket 49?

12                   **MAGISTRATE JUDGE PAYSON:** That's docket 49 and it's  
13 interrogatories 1 and 2. And I'll give you until June 30th to  
14 do that.

15                   **MR. BUCKINGHAM:** All right.

16                   **MAGISTRATE JUDGE PAYSON:** Okay. All right,  
17 Interrogatory No. 4, previous claims of discrimination. I'm  
18 confused about this because there was at one time some  
19 correspondence to the Court in which Mr. Buckingham said that  
20 he was subject to a confidentiality order, a settlement  
21 agreement that was confidential.

22                   I said I would look at that *in camera*. And then  
23 Mr. Buckingham, you wrote me and you said never mind, I'm not  
24 asking for you to look at it *in camera* because I'm disclosing  
25 it.

1                   So are you saying, Mr. Affronti, that you never got  
2 that?

3                   **MR. AFFRONTI:** I've never gotten anything in  
4 response to this interrogatory.

5                   **MAGISTRATE JUDGE PAYSON:** And what happened,  
6 Mr. Buckingham? I understood you said you were going to be  
7 turning that over. Why didn't you turn it over?

8                   **MR. BUCKINGHAM:** Sent him a letter saying that it's  
9 a settlement agreement and the agreement -- I couldn't turn it  
10 over because it was an agreement --

11                  **MAGISTRATE JUDGE PAYSON:** I'm ordering you to turn  
12 it over. So now you're under court order to turn it over.  
13 And to do so by June 30th.

14                  **MR. BUCKINGHAM:** Well, I'll have to find the  
15 attorney that represented me then because -- and it state on  
16 there it's an agreement --

17                  **MAGISTRATE JUDGE PAYSON:** Okay, I'm just confused  
18 because you sent me a letter and you said never mind, you  
19 don't need to review it I --

20                  **MR. BUCKINGHAM:** Because you said anything  
21 overbroad. To me that was overbroad. I didn't think you was  
22 gonna have me turn it over.

23                  **MAGISTRATE JUDGE PAYSON:** The reason for such  
24 request is due to Interrogatory No. 4 has already been  
25 answered.

1                   And Mr. Affronti is saying you didn't answer it.  
2                   So what was the basis of your telling me it had been answered  
3                   if you hadn't answered it?

4                   **MR. BUCKINGHAM:** I answered it by -- I told him -- I  
5                   was telling him that it was a settlement agreement. I done  
6                   answered that. I said due to a settlement agreement, all the  
7                   information is confidential.

8                   And then your letter stated that not to answer  
9                   anything overbroad, which that make it overbroad, would put me  
10                  in a lawsuit being sued.

11                  **MAGISTRATE JUDGE PAYSON:** Okay, what I'm going to do  
12                  is when I'm done today I'm going to draft a one paragraph  
13                  written order that directs you to turn that over to  
14                  Mr. Affronti.

15                  I'm doing that for your benefit so that if anybody  
16                  ever raises a question, you will have a written document that  
17                  says -- and I'll say that you objected to turning this over as  
18                  confidential, but I am ordering you to do that.

19                  So you will have a court order if anybody raises  
20                  anything that you can show and say the judge --

21                  **MR. BUCKINGHAM:** Where that leaves me in trying to  
22                  find employment in Rochester?

23                  **MAGISTRATE JUDGE PAYSON:** I don't know where it  
24                  leaves you, but that's my direction and I'm going to reflect  
25                  that in an order. I gave you the opportunity to do things

1 *in camera*; I was prepared to do that. You told me no, and I  
2 understood that you were going to answer it and provide it and  
3 you didn't and at this stage I'm going to direct -- okay, I'm  
4 done talking about this.

5 **MR. BUCKINGHAM:** All right.

6 **MAGISTRATE JUDGE PAYSON:** Interrogatory No. 5,  
7 interrogatory seeks information relating to Mr. Buckingham's  
8 attempts to find employment after his termination.

9 You gave a list of potential employers. I saw  
10 that, it was a handwritten list.

11 **MR. BUCKINGHAM:** Yeah.

12 **MAGISTRATE JUDGE PAYSON:** What Mr. Affronti is  
13 asking for and what he's entitled to is information about did  
14 you speak to anybody at those companies? Do you have a record  
15 of who you spoke to? When you spoke to them? Did you  
16 interview with anybody? Did you submit an application?

17 He's entitled to all that information about your  
18 efforts because your answer doesn't make clear. Did you  
19 apply? Did you just make a call? Did you not even call?

20 So the information that he asks for in  
21 Interrogatory 5 is information that by law you are required to  
22 give to him because the law says that if the Court or the jury  
23 were to -- were to find that the defendant has discriminated  
24 against you by firing you, you're entitled to damages. But  
25 the defendant is also entitled to make an argument that your

1 damages should be limited if you didn't make genuine efforts  
2 to find other employment.

3 So it's not just enough to say here are potential  
4 employers. They're entitled to know what did you do? Did you  
5 call? Who did you meet with?

6 So you have to give them more information, you  
7 know, if you -- if you can't remember the answers to all of  
8 the questions, then you have to say that.

9 **MR. BUCKINGHAM:** Yeah, that's how I found the ads  
10 that the company had when I was looking for employment, they  
11 were running ads looking for a tire technician. It's the same  
12 position I had.

13 **MAGISTRATE JUDGE PAYSON:** You're saying that these  
14 companies you identified were looking for tire technicians?

15 **MR. BUCKINGHAM:** Lewis General Tires looking for a  
16 tire technician.

17 **MAGISTRATE JUDGE PAYSON:** I'm confused because  
18 there's a list of a bunch of companies.

19 **MR. BUCKINGHAM:** Yeah, yeah.

20 **MAGISTRATE JUDGE PAYSON:** Okay, Mr. Buckingham, pull  
21 the base of the microphone closer to you.

22 All right, what page? Let's see, interrogatory --  
23 okay, employment ads hiring the Commercial Department job  
24 search, High Fall Mercury Print-Jasco.

25 My question is what does that mean? Does that mean

1 that you sent an application to them? That you called them?  
2 Or did you follow-up with them in any way?

3 **MR. BUCKINGHAM:** Yeah, I called and -- but they  
4 wasn't hiring.

5 **MAGISTRATE JUDGE PAYSON:** All right. Identify and  
6 describe each and every perspective employment opportunity you  
7 had pursued since May 2012.

8 So it's not asking do you know if there are any  
9 companies that are looking for tire technicians. It's asking  
10 what companies did you try to get a job with, either by  
11 calling on the phone and saying I see an ad, I'd like to come  
12 in for an interview or sending in an application or going in  
13 for an interview.

14 It says name, address, description of each  
15 potential employer, your efforts to obtain the employment.  
16 What did you do to try to get work? The person or persons  
17 with whom you contacted or were in contact with at each such  
18 potential employer. Who, if you have a record, who did you  
19 talk to? Who did you meet with at any of these companies?  
20 The status of all efforts concerning future employment? Is  
21 there anybody that you're still interviewing with? Any  
22 company you're still interviewing with?

23 That is the information that you are required to  
24 produce. And if you don't produce that, then it is a grounds  
25 for the defendant to seek sanctions. They're entitled to know

1 if you did nothing to try to find other work after you were  
2 terminated --

3 **MR. BUCKINGHAM:** Some on their form. There's --  
4 (inaudible) what's the date on that?

5 **MAGISTRATE JUDGE PAYSON:** I don't know what form  
6 you're talking about. I just see interrogatory -- I just see  
7 a list of companies.

8 **MR. BUCKINGHAM:** Yeah, I gave a list at that time.

9 **MAGISTRATE JUDGE PAYSON:** Okay. I'm not going to --  
10 I'm not going to go through this any differently. They want  
11 to know what company did you contact? Who did you contact?  
12 When did you contact? What did you do in the way of contact?  
13 Did you send an application? Did you meet with them? Did you  
14 call on the phone? What was the result? Did they interview  
15 you? Did they say no? Did they offer you a job? Are you  
16 still pursuing, okay?

17 It's pretty self-explanatory. What did you do to  
18 try to get a job? If the answer is nothing, you got to say  
19 nothing. If the answer is I called these ten places and they  
20 all told me they weren't hiring, you know, you have to say who  
21 did you talk to, when did you call , to the extent that you  
22 are able to the best of your recollection to provide that or  
23 to the extent that you have records; you kept a calendar or  
24 something that recorded this.

25 You have to provide that. Your failure to respond



1 may be a grounds for sanctions, including dismissal of the  
2 action. This is important. It's important for them to know  
3 what efforts did you make to try to find work after you were  
4 hired -- after you were fired.

5 **MR. BUCKINGHAM:** I gave the information, the list of  
6 the companies that I called.

7 **MAGISTRATE JUDGE PAYSON:** The list of the companies  
8 is insufficient as I've now said for four times. I'm not  
9 saying it again. You have to respond to paragraph 5.

10 I tried to be as clear as I can about what  
11 paragraph 5 means. If you need to consult with somebody else  
12 about what paragraph 5 means, you're free to do that.

13 I'm giving you until June 30th to respond fully to  
14 Interrogatory 5. The response, as I see it, which is just a  
15 list of company names on page 4 of document 49 is  
16 insufficient.

17 All right, there are issues with respect to  
18 document requests?

19 **MR. AFFRONTI:** There are, Your Honor.

20 **MAGISTRATE JUDGE PAYSON:** Okay.

21 **MR. AFFRONTI:** Those issues that I did not receive  
22 anything.

23 **MAGISTRATE JUDGE PAYSON:** Okay. Documents relating  
24 to Mr. Buckingham's claim for unemployment .

25 You made a claim for unemployment, correct?

1                   **MR. BUCKINGHAM:** Yes.

2                   **MAGISTRATE JUDGE PAYSON:** Okay. Do you have a file  
3 at home about your unemployment? Do you have documents  
4 relating to your claim for unemployment?

5                   **MR. BUCKINGHAM:** No, I just got a document of --  
6 when I got paid, unemployment paid me.

7                   **MAGISTRATE JUDGE PAYSON:** Okay. You have copies of  
8 payments or --

9                   **MR. BUCKINGHAM:** Yeah, payments.

10                  **MAGISTRATE JUDGE PAYSON:** Okay. Do you have any  
11 other -- do you have a copy of your application for  
12 unemployment?

13                  **MR. BUCKINGHAM:** No.

14                  **MAGISTRATE JUDGE PAYSON:** Okay. Did they ask for  
15 any documents? Do you have any correspondence?

16                  **MR. BUCKINGHAM:** No, I think it was over the phone.

17                  **MAGISTRATE JUDGE PAYSON:** Okay. All right, your  
18 unemployment stubs that you're talking about, you need to make  
19 copies of those and give them to Mr. Affronti, okay?

20                  **MR. BUCKINGHAM:** Okay.

21                  **MAGISTRATE JUDGE PAYSON:** By no later than  
22 June 30th.

23                  **MR. BUCKINGHAM:** Okay.

24                  **MAGISTRATE JUDGE PAYSON:** Okay.

25                  **MR. BUCKINGHAM:** Excuse me. The stub is just a list

1 of dates, it says dates and what they paid.

2 **MAGISTRATE JUDGE PAYSON:** Okay, just make a copy of  
3 what you have there.

4 **MR. BUCKINGHAM:** All right.

5 **MAGISTRATE JUDGE PAYSON:** Documents, communications  
6 regarding your employment search. Okay, we've already talked  
7 about that.

8 If you have a calendar that has notes in there,  
9 today I called so-and-so, or I'm going in to meet with  
10 so-and-so, you have to copy those pages and turn them over to  
11 Mr. Affronti.

12 If you have copies of letters that you sent out  
13 looking for work, if you kept a file because you thought it  
14 was relevant of the, you know, copies of advertisements that  
15 you responded to.

16 If you don't have any documents, you need to say  
17 to Mr. Affronti clearly I have no documents that respond to  
18 that, okay? If you have any documents that respond to that  
19 request, you have to turn copies of those over by no later  
20 than June 30th.

21 **MR. BUCKINGHAM:** All right, because I have one  
22 employer, one employer wanted to know why I wasn't working. I  
23 explained the situation that I was discriminated against, but  
24 they --

25 **MAGISTRATE JUDGE PAYSON:** Okay, the question is at

1 home -- at home do you have any notes, do you have any  
2 documents, do you have any letters, do you have a copy of an  
3 application to that employer?

4 **MR. BUCKINGHAM:** I get the address and --

5 **MAGISTRATE JUDGE PAYSON:** Okay, you have to do that  
6 in response to the interrogatory.

7 The documents are asking not for you to create  
8 something that doesn't exist. That's not what the document  
9 requests are asking. The interrogatory is asking you to  
10 identify those, but the document request is asking you if at  
11 home you have a file, here is a file of the efforts of the  
12 applications that I've sent, of the letters I sent, of the  
13 letters I've gotten back saying sorry, we're not hiring, you  
14 have to make copies of those documents and turn them over to  
15 Mr. Affronti by no later than June 30th.

16 If you don't have any such documents, you have to  
17 state clearly you have no such -- you've looked and you have  
18 no responsive documents in your possession.

19 Documents relating to previous claims of  
20 employment. We've dealt with that with respect to the  
21 settlement agreement, and I will make that a subject of an  
22 order later today or tomorrow morning, okay?

23 HIPAA authorizations. Did you bring HIPAA  
24 authorizations? Okay, Mr. Buckingham, you have claimed that  
25 as a result of the discrimination that you suffered at Lewis

1 General Tires, that you -- that caused you stress, that you  
2 had to take medications that you previously hadn't taken, that  
3 you received medical treatment for stress, including treatment  
4 for depression, stress, insomnia, hypertension.

5           The law is clear that when you're asking for  
6 damages to be awarded on the account of that emotional  
7 distress, the fact that you're on medication that you weren't  
8 getting before, they're entitled to your medical records,  
9 okay?

10           I understand that those medical records are medical  
11 records that you're concerned about turning over.  
12 Mr. Affronti is not permitted to use that -- those medical  
13 records for any purpose other than this litigation, you know,  
14 he can't distribute them to the newspaper because he wants to  
15 embarrass you about something that's in there. They can only  
16 be used for purposes of this litigation. But you are required  
17 to turn them over within a reasonable period of time.

18           Now, Mr. Buckingham, the first -- when was the  
19 first date that you claim you were discriminated against or  
20 what period of time?

21           Was it the beginning of 2012?

22           **MR. BUCKINGHAM:** First discrimination was in 2012.

23           **MAGISTRATE JUDGE PAYSON:** 2012, okay. All right,  
24 and then when were you terminated?

25           **MR. BUCKINGHAM:** 2012, May the 16.

1                   **MAGISTRATE JUDGE PAYSON:** Okay. Are you still being  
2 treated for emotional distress?

3                   **MR. BUCKINGHAM:** No, I have a doctor's letter.

4                   **MAGISTRATE JUDGE PAYSON:** Okay, my question is are  
5 you still being treated? Are you still taking any medication  
6 for emotional distress? Are you still experiencing symptoms?

7                   **MR. BUCKINGHAM:** No, I take over-the-counter  
8 medication so I can sleep.

9                   **MAGISTRATE JUDGE PAYSON:** Okay.

10                  **MR. BUCKINGHAM:** I have a hard time sleeping.

11                  **MAGISTRATE JUDGE PAYSON:** I am going to require that  
12 you sign HIPAA authorizations for your medical providers from  
13 January 1, 2011 to the present. It doesn't have to go back  
14 any earlier than that, but a year before the discrimination  
15 occurred.

16                  Mr. Buckingham, the best way that I can explain  
17 what the law is on this, and these issues arise all the time.  
18 I'm always explaining to people why when they file a lawsuit  
19 they have to do exactly what I'm requiring you to do today  
20 because you're going to be asking -- eventually going to be  
21 asking the jury give me X-amount of money to compensate me for  
22 emotional distress caused by what the defendant did, right?  
23 That's what you're asking for.

24                  They're entitled to know in your -- in your medical  
25 records are there references to Mr. Buckingham came in and

1 sought treatment because he was distraught over his divorce?  
2 Because then what the defendant is allowed to argue is, yes,  
3 he was emotionally distraught, but it wasn't employment; it  
4 was a divorce.

5           They're entitled to look at your medical records to  
6 see, you know, is there another explanation? Or contrary to  
7 what you say, do your medical records actually show your  
8 doctor said Mr. Buckingham -- I see Mr. Buckingham, you know,  
9 every month during 2012 and he's happy and cheerful and has no  
10 distress.

11           They're entitled to use that information at trial,  
12 okay?

13           **MR. BUCKINGHAM:** Okay. What is it? The doctor --  
14 the doctor letter stating --

15           **MAGISTRATE JUDGE PAYSON:** No, they're allowed to  
16 actually look at your records to see what's in your records.

17           **MR. BUCKINGHAM:** During employment I was fine. I  
18 haven't worked for Lewis General Tires all my life and I have  
19 turned over my payroll stuff from 2010, 2011 and 2012 that  
20 shows I've been to work every day.

21           **MAGISTRATE JUDGE PAYSON:** Okay.

22           **MR. BUCKINGHAM:** And I wasn't sick. So I got one  
23 doctor's letter stating what he treated me for. And that's  
24 what I turned over .

25           **MAGISTRATE JUDGE PAYSON:** Okay. I am requiring you

1 to sign these authorizations. Those authorizations allow  
2 Mr. Affronti to go to your medical providers and have the  
3 medical providers produce to him your medical records from  
4 2011 through the present.

5 There may not be anything relevant in those records  
6 or there may be relevant information that Mr. Affronti is  
7 going to use to say that either you didn't suffer as much as  
8 you said you did or there was another cause.

9 It is information that the law says is fair for the  
10 defendant to have when a plaintiff is making a claim that he  
11 suffered emotional distress because of the discrimination  
12 caused by the defendant. They're entitled to find out is  
13 there information in the medical records that shows he  
14 suffered distress? And if so, are there potential other  
15 causes, okay?

16 So I'm requiring you to sign those authorizations.  
17 You can refuse to do that. If you refuse to do that, I would  
18 then consider whether the action should continue, be permitted  
19 to continue or not.

20 It's -- I get this issue a lot. The law is  
21 well-settled and there is a requirement. If you want to take  
22 the -- if you want to sign them today and be done with it, you  
23 can sign them today. If you want to take them and look at  
24 them, you have to return them to Mr. Affronti by no later than  
25 June 30th, okay?



1                   **MR. BUCKINGHAM:** Okay. That statement, that HIPAA  
2 statement doesn't say from 2011 and --

3 MAGISTRATE JUDGE PAYSON: Okay --

4 MR. BUCKINGHAM: -- to present.

5                   **MAGISTRATE JUDGE PAYSON:** You're entitled to have  
6 the HIPAA statement limit the period of time to 2011 to the  
7 present. So if it went back earlier than 2011, you're  
8 correct, you don't have to sign anything that goes back  
9 earlier than 2011.

10                   Mr. Affronti, I'm limiting it from 2011 to the  
11 present, okay?

12                   **MR. BUCKINGHAM:** All right.

13                   **MAGISTRATE JUDGE PAYSON:** And those have to be  
14 turned over by June 30th unless they can be executed today,  
15 okay?

16 I think I've gone through what you had in your  
17 motions. I think I've tried to go through what Mr. Buckingham  
18 had in his motions.

19 I've given you both deadlines of June 30th to  
20 exchange what you need to exchange because I want the  
21 discovery to be complete so we can get this case moving  
22 towards a resolution, okay?

23 All right, thank you very much. Have a nice day.

24 (WHEREUPON, the proceedings adjourned at 4:29 p.m.)

25 \* \* \*

**CERTIFICATE OF TRANSCRIBER**

In accordance with 28, U.S.C., 753(b), I certify that this is a true and correct record of proceedings from the official electronic sound recording of the proceedings in the United States District Court for the Western District of New York before the Honorable Marian W. Payson on May 31, 2016.

S/ Christi A. Macri

Christi A. Macri, FAPR-CRR  
Official Court Reporter